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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958
No. 656

THE CITY OF LOS ANGELES, etc., *et al.*,

Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, *et al.*,

Appellees.

On Appeal From the Supreme Court of the State of California.

Brief of the American Civil Liberties Union of Southern California, Amicus Curiae.

Interest of Amicus Curiae.

The American Civil Liberties Union of Southern California (here designated A. C. L. U.), appears as *amicus curiae* in support of the position asserted by appellants. This brief is filed with the consent of the parties, through their attorneys, pursuant to Rule 42(1) of this Court.

The A. C. L. U. is a non-profit organization dedicated to the preservation and extension of civil liberties to the farthest extent compatible with a reasonable conception of order. The instant case appears to the A. C. L. U. to involve a fundamental question of due process of law. Hence it files this brief herein.

Statement of the Case.

Amicus curiae relies on the Jurisdictional Statement of appellants and adopts appellants' formulation of the Question Presented.

Argument.

Where the property of individual citizens or groups of individual citizens is adversely affected by the acts of a governmental agency, it is of great importance that these acts be done in a manner consistent with due process. Otherwise basic constitutional guarantees may be emasculated thereby.

It requires no argument to support the assertion that a large part, if not all, of our population makes constant use of the services of the Telephone Companies as well as other utilities. It is for this reason that such services are called "*public* utilities" and that they are subject to extensive regulation. Such regulation is acceptable (and constitutional) only because such services affect genuine public interests.

To the extent to which telephone rates are set so low as to prevent a reasonable profit by a privately-owned telephone company or to force that company out of business, such low rates adversely affect a property interest of that company; conversely, to the extent to which such rates are set so high as to afford the company a more than reasonable profit at the expense of the customers, high rates adversely affect a property interest of the customers. The essential result is the same, varying only in degree, whether the rate so set be permanent or interim in duration.

It follows that the procedures of the rate fixing agency must conform to established standards in order to guarantee that no person shall be deprived of property without due process of law.

There are numerous reported cases spelling out the principle that an affected public utility company is entitled to all of the elements of due process in the course of rate-fixing by a regulatory agency:

Chicago, Milwaukee & St. Paul Railway v. Minnesota, 134 U. S. 418, 548;

West Ohio Gas Co. v. Public Utilities Commission Ohio, 294 U. S. 63;

Railroad Commission of California v. Pacific Gas & Electric Company, 302 U. S. 388;

Market Street Railway Co. v. Railroad Commission, 24 Cal. 2d 378.

It is difficult to conceive a situation in which constitutional guarantees would protect one set of persons whose property rights were affected by a particular proceeding and these same guarantees would be unavailable to another set of persons whose property rights were thereby equally affected.

The essential elements of due process have frequently been catalogued. No summary, however cursory, would omit reasonable notice followed by an opportunity to be heard so that affected persons are afforded the chance to offer evidence and to test the validity of the facts and contentions of those presenting an opposing view.

In the proceedings before the Public Utilities Commission of California here in issue, it is a matter of record that the Motion for Interim Rate Relief submitted on be-

half of four companies was entertained in a hearing in which an Application for a regular rate increase had been duly filed on behalf of only one company (App. Juris. State., Appx. B). The "hearing" on the Motion for Interim Rate Relief proceeded forthwith. No notice at all was given to those who would be required to pay the increased rates. Such ommission falls far short of the standard that, where feasible, "notice must be reasonably calculated to inform parties of proceedings which may directly and adversely affect their legally protected interests."

Walker v. Hutchinson, 352 U. S. 112, 115.

A hearing conducted without reasonable notice is not a hearing at all in the constitutional sense of the term.

Twining v. New Jersey, 211 U. S. 78.

Conclusion.

The Motion for Interim Rate Relief, entertained without notice of any kind to the consumers, or to their municipal or other representatives, was granted in a manner which deprived the consuming public including the two individual appellants, of property without due process of law.

In the light of the foregoing a substantial federal question is presented and probable jurisdiction should be noted.

Respectfully submitted,

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